

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM HOLBROOK, Personal)	
Representative of the Estate of Wanda)	
Holbrook Deceased,)	
Plaintiff,)	
)	No. 1:17-cv-219
-v-)	
)	Honorable Paul L. Maloney
PRODOMAX AUTOMATION, INC., et al.,)	
Defendants.)	
)	

ORDER DISMISSING FIRST AMENDED COMPLAINT

Plaintiff William Holbrook filed a first amended complaint on June 23, 2017, adding a defendant to the lawsuit. Because Holbrook must first seek leave of the court to add a defendant or to file an amended complaint, the amended complaint (ECF No. 30) is DISMISSED.

Plaintiff filed this lawsuit on March 7, 2017. The complaint raises eleven claims against a total of five defendants. In lieu of an answer, on May 26, 2017, Defendant FANUC America filed a motion to dismiss under Rule 12(b). (ECF No. 25.) On June 23, 2017, Plaintiff filed a response to the motion (ECF No. 31) and the First Amended Complaint (ECF No. 30). The amended complaint raises the same eleven claims, and adds an additional defendant, FANUC Japan.

Two rules are implicated by the changes to the complaint. Amendments to a complaint are governed by Rule 15. Under the rule, a plaintiff may file an amended complaint as a matter of course within 21 days after the initial complaint is filed. Fed. R. Civ.

P. 15(a)(1)(A). After a Rule 12(b) motion is filed, the plaintiff has 21 days to amend his or her complaint. Fed. R. Civ. P. 15(a)(1)(B). “In all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). Rule 21 governs misjoinder of parties. Rule 21 permits a court to add or drop a party “[o]n motion or on its own[.]” Fed. R. Civ. P. 21.

At this point in the litigation, Plaintiff must file a motion requesting leave of the court to add a defendant. Plaintiff cannot rely on Rule 15(a)(1)(A) or (B). By May 12, 2017, all five defendants had filed appearances, from which the Court presumes that all five defendants had been served. The amended complaint was filed 28 days after the FANUC’s Rule 12(b) motion was filed. To file an amended complaint under Rule 15, Plaintiff must seek leave under 15(a)(2). Alternatively, and perhaps more appropriately, Plaintiff may request leave to add a defendant under Rule 21, which requires a motion.

For these reasons, Plaintiff’s First Amended Complaint (ECF No. 30) is **DISMISSED. IT IS SO ORDERED.**

Date: June 27, 2017

/s/ Paul L. Maloney

Paul L. Maloney
United States District Judge